IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2479 OF 2005

Upendra Shrikant Naik .. Petitioner

Versus

Sheetal Upendra Naik .. Respondent

Mr.Vikram Pai for petitioner

Ms.Seema Sarnaik for respondent.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 22nd February 2006.

P.C.

. Mr.Pai appearing for petitioner has argued before me that in pursuance of the directions issued by this Court a sum of

Rs.30,000/- and a further sum of Rs.18,750/- has been deposited in the trial court.

2. The submission of petitioner is two fold. He submits that the court below has proceeded on an erroneous basis that he was employed in USA and that he was earning a huge income. He submits that at the relevant time when he was abroad he was not employed and had incurred liabilities. His second contention is that now he has returned from abroad to India for good and also in search of a job. Presently, he is not working anywhere. He submits that an application is made for modification and/or variation of the order passed by the family court on the application of interim maintainance and his request is that the same be considered on its own merits and in accordance with law.

3. My attention is invited to the fact that a sum of Rs.1,08,250/- is either deposited or

paid till date in pursuance of the order dated 18th January 2005.

4. Ms.Sarnaik appearing for responden states that there is still outstanding of Rs.96,250/- and the same is not paid.

5. Considering the above submissions, interest of justice would be served if the petitioner deposits a further sum of Rs.25,000/- in the trial court without prejudice to his rights and contentions to seek modification and/or variation of the order under challenge within a period of four weeks from today. Modification application to be then dealt with by the family court within a period of four weeks from the date of such deposit. The deposit and receipt thereof are without prejudice to the rights and contentions of both sides and it would be open for respondent wife to contend that the order under challenge does not require any

modification.

6. Needless to state that if the amount of Rs.25,000/- is deposited and if it is withdrawn, the withdrawal would be subject to final order on the modification application and appropriation and/or adjustments would be open to be made while passing a final order. Petition disposed of.

(S.C.DHARMADHIKARI, J)